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No. 01-475

In the Supreme Court of the United States

IRMA JEAN JAMES AND TERRI LARY, PETITIONERS

v.

CITY OF DALLAS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

THEODORE B. OLSON
Solicitor General
Counsel of Record
ROBERT D. MCCALLUM, JR.
Assistant Attorney General
BARBARA C. BIDDLE
MICHAEL E. ROBINSON
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

RICHARD A. HAUSER
General Counsel
CAROLE W. WILSON
Associate General Counsel
HOWARD M. SCHMELTZER
Assistant General Counsel
CLARE HARRIGAN
Senior Trial Attorney
United States Department of Housing and Urban Development
Washington, D.C. 20410

21 pp

QUESTION PRESENTED

Petitioners are two African-American women who owned unoccupied houses that were demolished by the City of Dallas, Texas, after being cited for housing code violations. Pursuant to Federal Rules of Civil Procedure 23(b)(2), petitioners filed a class action complaint alleging that the City did not provide them with proper notice, and that the City and the Department of Housing and Urban Development (HUD) engaged in racial discrimination in the code enforcement. The question presented is:

Whether petitioners lack standing to seek an injunction that would require HUD and the City of Dallas to provide them with clear title to comparable replacement housing elsewhere in the City, require HUD to "monitor" the City to determine whether it is engaging in discrimination, and require HUD to eliminate the effects of HUD's and the City's alleged past discriminatory demolition practices.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-35) is reported at 254 F.3d 551. The opinion of the district court (Pet. App. 36-59) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 2001. The petition for a writ of certiorari was filed on September 17, 2001 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Through a statutory entitlement, the City of Dallas (City) receives a yearly Community Development Block Grant (CDBG) from the federal govern-

ment. 42 U.S.C. 5306. The primary objective of the CDBG program is the development of viable urban communities to benefit low and moderate income persons by, for example, "eliminati[ng] * * * slums and blight" and "eliminati[ng] * * * conditions which are detrimental to health, safety, and public welfare, through code enforcement [and] demolition." 42 U.S.C. 5301(c)(1) and (2). One of the statutorily authorized uses for CDBG funds is housing "code enforcement in deteriorated or deteriorating areas." 42 U.S.C. 5305(a)(3).

The City operates its code enforcement program as follows. Typically, a City investigator inspects a structure and, if code violations are found, refers the matter to the City's Urban Rehabilitation Standards Board (URSB). The URSB then sends the property owner notice of a hearing, where it is determined whether a given structure should be repaired, closed, vacated or demolished. If repairs are ordered, a City investigator reinspects the structure. If repairs have not been made, the URSB sends a notice informing the property owner of the failure to make repairs. Such failure results in the demolition of the structure unless the owner timely requests another hearing. Ultimately, the structure may be demolished by private demolition companies working for the City, in which case the City will place a lien on the resultant empty lot to cover its demolition costs, plus interest. See generally *Freeman* v. *City of Dallas*, 242 F.3d 642, 645 (5th Cir. 2001) (en banc).

2. Petitioners, Irma Jean James and Terri Lary, are African-Americans who owned unoccupied residential properties that were cited for code violations and demolished by the City. Pet. App. 3-5. James's property

was demolished in February 1994. *Id.* at 4. Lary's property was demolished in 1995. *Id.* at 5.

In February 1998, James filed suit against the City and the URSB Administrator alleging violations of due process and the Fourth Amendment. She also raised a claim of racial discrimination. Pet. App. 7. Thereafter, James amended her complaint, styling it a Rule 23(b)(2) class action. *Ibid.* The amended complaint dropped the claims against the URSB Administrator, added Lary as a plaintiff, and added the Department of Housing and Urban Development (HUD) as a defendant. *Ibid.*

3. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the district court certified both a "process" class and a "race discrimination" class. Pet. App. 9-11. The "process class" consisted of owners of "repairable" single-family homes that the City allegedly demolished without proper notice or a warrant. *Id.* at 10-11. The "discrimination class" consisted of individuals alleging that the City and HUD discriminated on the basis of race in code enforcement. *Id.* at 11. Only the claims of this latter class apply to HUD.[1] *Id.* at 37. With respect to such claims, petitioners initially sought a permanent injunction requiring the City and HUD to provide "each class member with clear title to a comparable replacement single-family housing unit or enter equivalent injunctive relief." *Id.* at 8.

On April 4, 2000, the district court granted petitioners' motion for class certification pursuant to Federal Rules of Civil Procedure 23(b)(2). Pet. App. 9. Pursuant to Federal Rules of Civil Procedure 23(f), HUD and the City immediately appealed this grant of

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[1] Thus, this brief generally does not address those portions of the petition and opinion below dealing with the "process class" or its claims.

class certification. See *id.* at 11. HUD and the City argued that the class was not properly certified as a Rule 23(b)(2) class and that, in any event, petitioners lack Article III standing to seek injunctive relief on behalf of themselves and the class they purport to represent.

On September 25, 2000, after its decision to certify the class and while appeal of the class certification was pending, the district court granted petitioners leave to file a Third Amended Complaint. Pet. App. 9 & n.7. In addition to the above relief previously requested, which had formed the basis for the district court's decision that the class should be certified, petitioners' complaint now also demanded the following: (1) "[a] permanent injunction requiring HUD to administer all of its housing and community development related programs and activities to eradicate the effects of HUD's discrimination on the housing and neighborhood conditions in the predominantly black census tracts"; (2) "[a] permanent injunction against the City and HUD prohibiting their use of overt racial stereotypes in the classification of neighborhoods for purposes of conducting housing and community development related activities, including housing demolition activities, within the City"; (3) "[a] permanent injunction against the City's and HUD's continuation of policies and practices traceable to their use of overt racial stereotypes in its neighborhood classification schemes that continue to have discriminatory effects"; (4) "[a] permanent injunction requiring the City and HUD to implement a Court approved plan to eliminate the effects of the City's and HUD's discrimination"; (5) "[a] permanent injunction prohibiting continued HUD funding for * * * housing code enforcement and other housing demolition related activities in predominantly black census tracts" until

the court-approved plan becomes effective; and (6) "[a] permanent injunction requiring HUD to establish, maintain, and use a monitoring system * * * to determine if the City is discriminating * * * in its implementation of HUD funded code enforcement." *Id.* at 117-119.

4. The court of appeals dismissed the "discrimination class" claims, concluding that petitioners lack Article III standing as to those claims. Pet. App. 20. The court noted that, as framed in petitioners' Third Amended Complaint, petitioners' "discrimination class" claims did not purport to assert an injury arising out of the past damages caused by the demolition of their houses, nor one based on a fear of imminent demolition of houses they currently own or plan to purchase. Instead, petitioners alleged that the pattern of racial discrimination in housing demolition and enforcement throughout the entire City had decreased the value of their particular properties. See *id.* at 21. As the court of appeals explained, "[i]n so framing their claim, the named Plaintiffs [sought to] steer a course between a damages action for which they might have standing, but which would undermine their Rule 23(b)(2) injunctive status, and a pure prospective injunction that would enjoin the City and HUD from demolishing other homes in the future, but that would undermine standing for these named Plaintiffs who do not own other homes in the City." *Ibid.*[2]

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[2] To proceed as a class, plaintiffs must first meet the four requirements set forth in Federal Rules of Civil Procedure 23(a). If the requirements of subsection (a) are met, then the plaintiffs must show that the action is maintainable as a class action under one of Rule 23(b)'s subsections. See *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 614 (1997). Rule 23(b)(2) permits class actions for declaratory or injunctive relief where "the party opposing the class

However, framing their injury as a continuing injury and not as an imminent future injury left the petitioners "with a difficult argument of demonstrating how the requested injunctive relief [would] redress the ongoing economic effects on their already demolished homes and individual pieces of property." Pet. App. 22. For example, the court held, "the named Plaintiffs' request for clear title to comparable housing in another part of Dallas will not redress the continuing adverse economic effects on their particular properties or neighborhoods." *Ibid.* Nor, the court held, could petitioners show that a permanent injunction prohibiting the City and HUD from using overt racial stereotypes in the classification of neighborhoods "will remedy the alleged ongoing economic effects of past racial discrimination on their particular properties." *Id.* at 23. The court found too speculative to support Article III standing the petitioners' assertion that, "if the alleged classifications are altered, this [change] will affect future investment, and thereby, [improve] their properties or neighborhoods." *Ibid.*

The court of appeals also held that the requested permanent injunction requiring HUD to "monitor" the City to determine if it is engaging in discrimination on the basis of race would "not remedy the continued depreciation in property values in the named Plaintiffs' neighborhood." Pet. App. 24. Finally, the court held that petitioners lacked Article III standing to request injunctive relief to "eradicate the effects of HUD's

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has acted or refused to act on grounds generally applicable to the class." As the advisory committee on Rule 23 explains, Rule 23(b)(2) "does not extend to cases in which the appropriate final relief relates exclusively or predominantly to money damages." Fed. R. Civ. P. 23 advisory committee's note.

discrimination" or to have the district court approve a plan to eliminate the effects of the City's and HUD's alleged discrimination. *Id.* at 23-24. Specifically, the court held that, "if read to require comparable housing, this request is better characterized as a prayer for damages" inappropriate for Rule 23(b)(2) relief, but "if read as a sweeping request to generally eradicate the effects of discrimination, the request is not sufficiently targeted to remedy the named Plaintiffs' personal injuries." *Id.* at 24. As a result, the court "vacate[d] [the discrimination] [c]lass and remand[ed] with instructions to dismiss those claims." *Id.* at 26. Because the only claims against HUD were based on claims brought by this class, the court also instructed the district court "to dismiss HUD from the lawsuit." *Ibid.*

ARGUMENT

Petitioners' request for review by this Court at this juncture is premature, inasmuch as the court of appeals remanded many of the petitioners' other claims to the district court for further proceedings. Furthermore, the court of appeals' decision contains nothing more than a routine, straightforward application of well-established law to alleged facts. Finally, that decision is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore unwarranted.

1. While the court of appeals did dismiss a subset of petitioners' claims, which it now asks this Court to review, it simultaneously remanded seven claims to the district court for further proceedings. Pet. App. 19, 35. In light of this remand, this case "is not yet ripe for review by this Court." *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam) (citing *Hamilton-Brown Shoe Co.* v.

Wolf Bros. & Co., 240 U.S. 251, 257-258 (1916)). In general, this Court declines to exercise its certiorari jurisdiction until a final judgment has been entered in the lower courts. See *Mazurek* v. *Armstrong*, 520 U.S. 968, 975 (1997); *Hamilton-Brown Shoe Co.*, 240 U.S. at 257-258; *American Constr. Co.* v. *Jacksonville, Tampa & Key West Ry.*, 148 U.S. 372, 384 (1893); see also *Virginia Military Inst.* v. *United States*, 508 U.S. 946, 946 (1993) (opinion of Scalia, J., noting the interlocutory posture of the litigation); R. Stern, et al., *Supreme Court Practice* § 4.18, at 195-196 (7th ed. 1993).

Denial of certiorari at this juncture would not preclude petitioners from raising the same issues in a later petition after final judgment has been rendered. See, *e.g.*, *Hughes Tool Co.* v. *TWA*, 409 U.S. 363, 365-366 n.1, (1973); *Hamilton-Brown Shoe Co.*, 240 U.S. at 257-259. Moreover, there is no unique circumstance of this case that would provide a reason to depart from the general rule favoring the denial of certiorari at this stage in the proceedings. In fact, because the claims pending in the district court on remand are closely related factually to the dismissed claims comprising this appeal, any legal issues worthy of further review would be better suited for review after final judgment, when a more concrete evidentiary and factual record will have been developed.

2. In any event, the court of appeals' decision is nothing more than a straightforward application of uncontroversial legal principles. Under this Court's well-established standing jurisprudence, "the irreducible constitutional minimum of standing contains three elements," including a likelihood "that the injury will be redressed by a favorable decision." *United States* v. *Hays*, 515 U.S. 737, 742-743 (1995) (citations omitted); *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 105

(1998) (same). Further, in seeking injunctive relief, a plaintiff must show that the defendant is likely to cause the plaintiff future injury that the sought-after relief will prevent. See *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 102 (1983) ("'[P]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief * * * if unaccompanied by any continuing, present adverse effects.'"). In the context of a class action, "if none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." *O'Shea* v. *Littleton*, 414 U.S. 488, 494 (1974). The court of appeals explicitly and conscientiously applied these bedrock legal principles to conclude that petitioners lack standing on each of their discrimination claims. Pet. App. 19-25.

3. There is no merit to petitioners' contention that "the court of appeals' judgment that petitioners' remedial request for replacement [housing] units was a request for damages and not injunctive relief directly conflicts with the general principles set by decisions of this Court and rulings of other U.S. Courts of Appeals in similar cases." Pet. 20. As this Court has explained, "damages * * * are intended to provide a victim with monetary compensation for an injury to his person, property, or reputation." *Bowen* v. *Massachusetts*, 487 U.S. 879, 893 (1988). Thus, "[t]he term 'money damages,' * * * normally refers to a sum of money used as compensatory relief. Damages are given to the plaintiff to *substitute* for a suffered loss, whereas specific remedies are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled." *Department of the Army* v. *Blue Fox, Inc.*, 525 U.S. 255, 262 (1999) (citations and internal quota-

tion marks omitted). It is inescapable that petitioners are requesting comparable replacement housing as a "substitute" for their demolished homes, and that comparable replacement housing would require the expenditure of government funds. Because their property has been destroyed and "cannot be returned * * * any relief can only be in the form of damages." *Armendariz-Mata* v. *Department of Justice, DEA*, 82 F.3d 679, 682 (5th Cir.) (district court lacked jurisdiction under the Administrative Procedure Act (APA)—which provides a waiver of the federal government's sovereign immunity for equitable, but not monetary, relief, 5 U.S.C. 702—over a prisoner's claim for the return of seized property or its value where the property had been destroyed or possession thereof relinquished by the government), cert. denied, 519 U.S. 937 (1996). See also *Edelman* v. *Jordan*, 415 U.S. 651, 665 (1974) (relief that would require government officials to use government funds to make reparation for the past "resembles far more closely [a] monetary award against the [government] itself * * * than it does * * * prospective injunctive relief").

Other federal courts of appeals are in agreement: Petitioners "cannot transform a claim for damages into an equitable action by asking for an injunction that orders the payment of money." *Jaffee* v. *United States*, 592 F.2d 712, 714-715 (3d Cir.) (holding, in the context of the APA, that the plaintiff could not avoid the jurisdictional bar by characterizing as an injunction relief that effectively would order the government to pay money), cert. denied, 441 U.S. 961 (1979). See also *Lukenas* v. *Bryce's Mountain Resort, Inc.*, 538 F.2d 594, 595-596 (4th Cir. 1976) (action seeking rescission of plaintiffs' individual purchases of lots in a Virginia subdivision, and the recovery of all sums paid by them

in connection with such purchases, though cast as an action for equitable relief, was primarily an action for money damages and so unsuitable for treatment as a class action under Rule 23(b)(2)).

Petitioners cite no case from this Court purportedly in conflict with the court of appeals' decision. In addition, the other circuit court decisions that petitioners cite are easily distinguished. The relief provided in the cases cited (Pet. 21-28) is very different from that requested by petitioners here. In the cases they invoke, courts entered orders requiring HUD to use its programs prospectively to remedy existing segregation and to foster future integration.[3] None of those cases involves anything resembling the type of relief sought here, which, if granted, would result in HUD's being forced to provide specific individuals, as compensation for the demolition of their houses, with "clear title" to replacement houses of comparable size and value.

In any case, as noted below, pp. 12-13, *infra*, the court of appeals held that, quite apart from the

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[3] See *Munoz-Mendoza* v. *Pierce*, 711 F.2d 421, 429 (1st Cir. 1983) (plaintiffs have standing to seek order requiring HUD to conduct racial impact study in connection with HUD's decision to grant money to the City of Boston to fund commercial complex because study might prompt "HUD and the City of Boston * * * either [to] choose, or be required, to redirect some of the [Urban Development Action Grant] loan repayments in a way that redresses the plaintiffs' cognizable injuries"); *Davis* v. *HUD*, 627 F.2d 942, 945 (9th Cir. 1980) (district court may find it appropriate to consider necessity of injunctive relief to prevent HUD from disbursing future funds to the city, absent compliance by the agency with controlling statute); *Garrett* v. *City of Hamtramck*, 503 F.2d 1236, 1248 (6th Cir. 1974) (HUD may be enjoined from providing assistance to the city with respect to projects unless satisfactory plan for relocation of persons to be displaced is presented to HUD and approved by the district court).

compensatory nature of the relief, replacement housing would not redress the specific injury alleged by petitioners here —*i.e.*, the ongoing economic effects of past practices on their properties. Pet. App. 18, 23. This determination provides a sufficient and independent (and case-specific) alternative basis for concluding that petitioners' discrimination claims must be dismissed. This fact-intensive and contested alternative standing ground would necessarily have to be reviewed by this Court before it could even reach the merits of petitioners' claim regarding the proper characterization of its relief. Accordingly, this case constitutes a particularly poor vehicle for resolving that latter issue.

4. Finally, contrary to petitioners' various assertions, the court of appeals decided this case correctly.

a. Petitioners' attack on the court of appeals' conclusion that petitioners' injuries cannot be redressed by any of their requested remedies is mistaken. Petitioners' injury, which they narrowly frame as the continuing adverse effects of the alleged city-wide racially discriminatory demolition practices on their particular properties, would not likely be redressed by providing them with title to distinct parcels. As the court of appeals held, the petitioners' "requested injunctive relief simply does not redress the continuing devaluation of *their particular lots* of property and neighborhoods because of racially discriminatory demolitions taking place in all parts of the City." Pet. App. 21-22 (emphasis added). Just as in *Lyons*, petitioners here are seeking a form of injunctive relief that, though it might surely have some beneficial effect on some property-holders in the class they purport to represent, will not necessarily have any effect on their particular properties. Thus, any "injury" they are currently suffering will not likely be remedied through the form

of relief they now seek. Accordingly, the court of appeals correctly held that petitioners failed to establish that there is anything that HUD could now do that would likely provide them with relief from any current or future injury.

b. Petitioners also contend that the court of appeals erred by failing to interpret their complaint as alleging "that the disproportionate demolitions had caused and were causing indirect effects on property values and other conditions in their and the class members' neighborhoods." Pet. 15. According to petitioners, "[w]hether or not they would choose to build another house in the neighborhood, their land is in the targeted neighborhoods * * *. As the discriminatory demolitions continue, the number of vacant lots continues to increase. The increase continues to affect petitioners' property values and the municipal services and facilities provided to the neighborhood by the City." Pet. 17.

However, the court of appeals in fact construed their complaint in precisely the manner that petitioners urge upon this Court. Moreover, the court of appeals directly responded to these assertions when it concluded that petitioners had failed to prove the effects they alleged because they "can only speculate that if the alleged classifications are altered" that alteration will have "an[] impact on their property or their neighborhoods." Pet. App. 23. Despite petitioners efforts to reargue this point (Pet. 16), it remains mere conjecture that more houses on Lary's block will be demolished by reason of city-wide code enforcement and demolition practices, or that future demolitions would reduce, rather than enhance, the value of her property.[4] This

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[4] Contrary to petitioners' assertions, Congress has determined that the "elimination of slums and blight" and the "elimination of

Court repeatedly has held that such conjecture is insufficient to support standing. See, *e.g.*, *Lyons*, 461 U.S. at 102-105 (citing cases).[5]

c. Petitioners claim also that the court of appeals' decision treated inconsistently petitioners' "discrimination class" and "process class" claims. That is, petitioners assert that, in evaluating the "process class" claims, the court of appeals acknowledged that their land continues to be impaired by the demolition cost liens and other debts imposed by the City and that this ongoing harm is sufficient to give petitioners standing to seek an injunction directing the City to cancel these debts and liens. Yet, petitioners contend, "the appeals court ignored this effect in its consideration of standing to raise the race discrimination claims." Pet. 19. According to petitioners, "[i]f the demolitions were illegal because of racial discrimination, then an injunction removing the debt, lift[ing] the lien, and eliminat[ing] the other collateral effects would effectively abate those consequences." Pet. 20.

Even if the petitioners did have standing to pursue their discrimination claims on the basis of this remedy, standing would not extend to those claims *as they are*

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conditions which are detrimental to health, safety, and public welfare," 42 U.S.C. 5301(c)(1) and (2), are likely to improve property values.

[5] Indeed, the unusual posture of this case, and corresponding lack of record evidence congruent with the requested relief—attributable to the petitioners' eleventh-hour decision to request additional forms of relief after the hearings held by the district court and while this case was already pending on appeal—not only leads to the fatal speculativeness of their claims regarding what the effect of these injunctions might be, but also makes it a particularly poor vehicle for the determination of any legal issue in this Court.

asserted against HUD. HUD did not itself assess any demolition costs or impose any liens on petitioners' property, and HUD has no power to cancel debts owed to the City or property liens imposed by the City. Moreover, it is clear on the face of the complaint that petitioners did not request this remedy against HUD. The complaint explicitly requests an "injunction enjoining the *City*" to cancel debts and release liens. Pet. App. 116 (emphasis added). Petitioners' complaint nowhere requests relief of this nature against HUD.

And, in any case, the court of appeals correctly declined to consider this remedy as a basis on which petitioners might have standing to pursue their discrimination claims. The complaint references the demolition debts and associated liens only in sections that explicitly apply to the "process class" claims. See Pet. App. 111 (¶ 12) (referencing demolition cost assessments and associated liens under subheading "Due process and unreasonable seizures"); *id.* at 115 (¶ 31) (same under "Claims for relief" section entitled "due process/warrant claims"). By contrast, the sections of the complaint discussing the discrimination claims contain not a single reference to either the debt attributable to the demolitions or the associated liens. See *id.* at 109-111 (¶¶ 6-11); *id.* at 115 (¶¶ 33-34). The court of appeals' construction of the requested injunction ordering the City to cancel the debt and lien as "process class" relief therefore was correct. The court of appeals surely cannot be faulted for taking petitioners' claims as they have consistently been pleaded throughout the various iterations of their complaint.

d. Petitioners misconstrue the court of appeals' decision in alleging that the court wrongly refused to consider the requested injunction against the use of racial classifications on the basis "that petitioners did

not plead a stigmatic injury from the use of the racial classification." Pet. 18 (citing Pet. App. 23). Petitioners contend that they "have pled and introduced proof that racial classifications have been applied to the neighborhoods in which they own property in connection with a municipal program demolishing repairable single-family homes," and that "[t]his is the stigma-plus injury that does confer standing under Article III." Pet. 18. However, on this point, petitioners have misread the court's opinion.

Contrary to petitioners' suggestion, the court of appeals did not refuse to consider petitioners' request for injunctive relief on this basis. Rather, the court of appeals noted that, in general, "the racial classification of the homeowners is an injury in and of itself," Pet. App. 23 n.18 (citation and internal quotation marks omitted), and that this Court in *Allen* v. *Wright*, 468 U.S. 737 (1984), recognized that "[t]here can be no doubt that this sort of noneconomic injury is one of the most serious consequences of discriminatory government action *and is sufficient in some circumstances to support standing*," *id.* at 755 (emphasis added). In the particular circumstances of this case, though, the court of appeals concluded that "[p]laintiffs do not claim that the racial classification, itself, provides standing for the requested injunctive relief, but seek to tie the racial discrimination to continued effects of the demolition on their properties. * * * Because Plaintiffs have not based their standing argument on this theory, we need not address whether the alleged racial classification, alone, is 'sufficient' in this circumstance 'to support standing.'" Pet. App. 23 n.18. Plainly, then, the court of appeals did not deny petitioners an injunction because they "did not plead a stigmatic injury from the use of the racial classification," as petitioners assert

(Pet. 18). It denied them injunctive relief for precisely the reason it gave, namely that the relief requested would not redress the injury they did allege.[6]

e. Finally, petitioners argue that the court of appeals relied on prudential standing principles despite the fact that they are seeking relief under the Fair Housing Act, 42 U.S.C. 3604(a), 3608(e). Petitioners assert that this Court has held that "Congress intended to eliminate the use of all but the minimum Article III considerations in determining standing under the Fair Housing Act." Pet. 29. It is plain from the court of appeals' opinion, however, that the court's conclusion that petitioners lacked standing was based on Article III redressability considerations, not on prudential standing limitations. See, *e.g.*, Pet. App. 13, 14-15, 26 n.22.

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[6] Moreover, even had the petitioners claimed a stigmatic injury of the type they now allege, they still would not have had standing to bring this Rule 23(b)(2) action seeking a future injunction to remedy an ongoing injury. That is, even if one read the complaint, as petitioners allege it should be read (Pet. 18), to have "pled * * * that racial classifications have been applied to the neighborhoods in which they own property *in connection with a municipal program demolishing repairable single-family homes*," petitioners, who are no longer owners of repairable single-family homes, no longer suffer from the alleged resultant injury (emphasis added). Thus, to the extent that such an injury would be remediable by an injunction, that injunction would not redress any injury suffered by the petitioners, who therefore would have no standing to request such relief on behalf of themselves or the purported class to which they belong.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

BARBARA C. BIDDLE
MICHAEL E. ROBINSON
Attorneys

RICHARD A. HAUSER
General Counsel

CAROLE W. WILSON
Associate General Counsel

HOWARD M. SCHMELTZER
Assistant General Counsel

CLARE HARRIGAN
Senior Trial Attorney
United States Department of Housing and Urban Development

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